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In the Supreme Court of the United States

OCTOBER TERM, 1955

No. —

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

LION OIL COMPANY

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

The Solicitor General, on behalf of the National Labor Relations Board, prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Eighth Circuit entered on April 22, 1955, denying the Board's petition for enforcement of its order against Lion Oil Company.

OPINIONS BELOW

The opinion of the court below (App. A, *infra*, pp. 15-26) is reported at 221 F. 2d 231. The findings of fact, conclusions of law, and order of the Board (R. 205-219) are reported at 109 NLRB 680.

JURISDICTION

The judgment of the court below was entered on April 22, 1955. The jurisdiction of this Court is

invoked under 28 U.S.C. 1254, and Section 10(e) of the National Labor Relations Act, as amended.

QUESTION PRESENTED

Section 8(d)(4) of the Act provides that parties who wish to modify or terminate a collective bargaining contract must "continue . . . in full force and effect, without resorting to strike or lock-out, all the terms and conditions of the existing contract for a period of sixty days after such notice [of their wish to modify or terminate] is given or until the expiration date of such contract, whichever occurs later."

The question presented is whether the requirement of the foregoing Section is satisfied where a contract provides for negotiation and adoption of modifications at an intermediate date during its term, and a strike in support of modification demands occurs after the date on which such modifications may become effective—and after the sixty day notice period has elapsed—but prior to the terminal date of the contract.

STATUTE INVOLVED

The statutory provision principally involved, Section 8(d) of the National Labor Relations Act, as amended (61 Stat. 136, 29 U.S.C. 151, *et seq.*), appears in Appendix B, *infra*, pp. 27-29.

STATEMENT

1. *The Facts.*—The Oil Workers International Union, C.I.O., hereafter called the Union, was certified by the Board as the representative of the

Company's employees in 1944, and in the years following entered into a series of collective bargaining agreements with the Company (R. 148; 2, 14). The last of these agreements prior to the events here involved was entered into on or about October 23, 1950, and it provided, *inter alia* (R. 28):

> This agreement shall remain in full force and effect for the period beginning October 23, 1950, and ending October 23, 1951, and thereafter until canceled in the manner hereinafter in this Article provided.
>
> This agreement may be canceled and terminated by the Company or the Union as of a date subsequent to October 23, 1951, by compliance with the following procedure:
>
> (a) If either party to this agreement desires to amend the terms of this agreement, it shall notify the other party in writing of its desire to that effect, by registered mail. No such notice shall be given prior to August 24, 1951. Within the period of 60 days, immediately following the date of the receipt of said notice by the party to which notice is so delivered, the Company and the Union shall attempt to agree as to the desired amendments to this agreement.
>
> (b) If an agreement with respect to amendment of this agreement has not been reached within the 60-day period mentioned in the subsection immediately preceding, either party may terminate this agreement thereafter upon

> not less than sixty days' written notice to the other. Any such notice of termination shall state the date upon which the termination of this agreement shall be effective.

On August 24, 1951, the Union, in accordance with the foregoing contract provision, served written notice on the Company of its "desire to modify the collective bargaining contract now in effect," and attached thereto "some of the proposed changes" it wished to make (R. 150; 81-94). Copies of the Union's notice were also sent to the Federal Mediation and Conciliation Service and the State Labor Commissioner of Arkansas for the express purpose of conforming with the requirements of Section 8(d)(3) of the Act (R. 150; 81-82).[1]

Contract negotiations with respect to the proposed modifications began shortly thereafter, and continued through the fall and winter (R. 150-151; 15-16). Neither party notified the other that it wished to terminate the existing contract, but on February 14, 1952, no agreement having been reached, the employees voted to strike in support of wage and other economic demands which had been made by the Union but rejected by the Com-

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[1] Section 8(d)(3) provides in substance that in fulfillment of the statutory duty to bargain collectively an employer or labor union desiring to modify or terminate an existing contract must, *inter alia*, serve notice of the fact that a labor dispute has arisen on "the Federal Mediation and Conciliation Service within thirty days * * * and * * * any State or Territorial agency established to mediate and conciliate disputes within the State or Territory where the dispute occurred, provided no agreement has been reached by that time."

pany (R. 151; 102-103, 24). The proposed strike, originally set for March 3, 1952, was thereafter postponed three times, but when all efforts to avoid it through further negotiations failed, the strike finally went into effect on April 30, 1952 (R. 150-151; 103, 104, 106, 16).

Following several weeks of the strike during which no apparent progress was made toward settling the strike issues, the Union, at a meeting with the Company on June 21, 1952, announced that it "was offering to return all the strikers unconditionally, and wanted to know what schedule they should report on with no strings attached" (R. 153, 155; 134, 128, 110, 144, 94-95). The Company, however, declined the offer, and took the position that the employees could not return to work until the Company's contractual terms were met (R. 153-155; 99-100, 111, 134, 18).

In accordance with the Union's offer to end the strike, large numbers of the employees applied both singly and in groups at the Company's gate or by telephone for reemployment to their jobs (R. 156; 116, 120-121). The plant superintendent interviewed many of the applicants, and rehired some upon condition, individually assented to by those who were reinstated, that each would "continue to come to work daily and continuously throughout the period of the remainder of the strike" and would not honor any picket line at the Company's plant (R. 216; 120, 122, 123, 18-19).

Negotiations for a modified contract continued after June 21 as before (R. 173-176; 115, 135-138).

During July, however, as the parties progressed toward agreement, the Company announced that its execution of a new contract would be conditioned on withdrawal by the Union of the unfair labor practice charge in this case (R. 175-176; 130, 132, 135-137). The Company, however, receded from this position on July 30, and shortly thereafter, on August 3, 1952, accord was finally reached on all disputed issues and the agreement was formally executed (R. 176-177; 115-116). The Company's employees were reinstated the following day, and the plant resumed full production soon thereafter *(ibid.)*.

2. *The Board's Decision.*—The Board concluded upon the foregoing facts that the Company had violated Section 8(a)(1), (3) and (5) of the Act when "it rejected the Union's attempts to get the strikers back to work, but at the same time individually interviewed the strikers and reinstated them upon their assurance that they would not strike" (R. 216-217). This conduct, in the Board's view, "required employees, as a condition of employment, to give up their adherence to the Union as their bargaining representative" and, instead, to deal with the Company as individuals; accordingly, it constituted both discrimination "violative of the Act, as to the strikers who continued to adhere to the lawful bargaining position of their statutory representative" *(ibid.)*, and a refusal to accord full recognition to the Union as the employees' bargaining representative, as required by the Act. In addition, the Board concluded that the

Company's conditioning of the execution of a contract upon the Union's withdrawal of the unfair labor practice charge filed with the Board constituted a refusal to bargain in good faith, in violation of Section 8(a)(5) of the Act (R. 217).

In reaching these conclusions, the Board rejected the Company's defense that the strikers had lost the protection of the Act because they had struck while a contract was in effect and therefore in contravention of the requirement of Section 8(d) of the Act that no strike in support of contract modifications take place "for a period of sixty days after * * * notice [of a proposed modification] or until the expiration date of [the existing] contract, whichever occurs later." The Board determined that the "expiration date" of a contract, as the term is used in Section 8(d), comprehends "an agreed date in the course of [the contract's] existence when the parties can effect changes in its provisions" (R. 211). Since in this case the contract by its terms was open to modification on October 23, 1951, and since the Union gave notice of a desire to negotiate modifications of it precisely 60 days before that time, and did not strike until several months thereafter, the Board concluded that the strike satisfied the "waiting period" requirements of Section 8(d).[2]

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[2] Two Board members stated differing views of the meaning of Section 8(d) in separate opinions. Member Peterson, concurring with the majority in result, adopted the earlier view of the Board that Section 8(d) permitted strikes in support of contract changes at any time during a contract after 60 days' notice (R. 219-222). See *Wilson & Co.*, 89 NLRB 310.

3. *The Decision of the Court of Appeals.*—The court below did not reach the merits of the Board's unfair labor practice findings. In its view, the strike failed to satisfy the requirements of Section 8(d) with the consequence, as provided in that Section, that the strikers lost their status as employees under the Act and the protection afforded them by its unfair labor practice provisions.

In its opinion, the court below emphasized that the 60 days' notice given by the Union on August 24, 1951, of its desire to modify the existing contract did not have the effect of terminating the contract. According to the court, and in this respect the Board's decision was in full agreement, the contract by its terms became one of indefinite duration following the lapse of the 60 days' notice period, and was in full effect at the time of the strike. Turning, then, to the application of Section 8(d), the court below rejected the construction given that provision by the Board; instead, it read the statutory language to prohibit strikes during the life of a contract regardless of any reopening provision in the contract. To reach this conclusion, the court construed the phrase "expiration date," in Section 8(d) to be synonymous with "termination date." The reading thus given Section 8(d)

Member Murdock dissented (R. 222-238). In his view, Section 8(d) is applicable only during the period around the termination of a contract. Accordingly, he concluded in this case that since the contract at the time of the strike was terminable by either party, Section 8(d)(4) required fulfillment at that time of the procedures outlined in Section 8(d)(1) through (3) before a strike could lawfully be called.

was the same as that given by the same court in *Local No. 3, United Packinghouse Workers of America* v. *National Labor Relations Board,* 210 F. 2d 325, certiorari denied, 348 U.S. 822, which was relied upon in the opinion in this case. Since it was clear that the contract in the present case had not terminated, it followed from the court's reasoning that the strike fell within the ban of Section 8(d), and that the strikers therefore lost the protection which the Act normally accords to economic strikers against the commission of unfair labor practices by their employer.

REASONS FOR GRANTING THE WRIT

1. The petition in *Local No. 3, United Packinghouse Workers of America* v. *Wilson & Co.* and *National Labor Relations Board,* No. 124, October Term, 1954, certiorari denied, 348 U. S. 822, sought determination by this Court of the correct construction and application of Section 8(d) upon facts substantially similar to those in this case. As the Board stated in its memorandum to the Court in that case, "the question of the interpretation of Section 8(d) is one of real importance in the administration of the Act, and we would welcome authoritative resolution of that question." The Board further explained in its memorandum that the Board did not seek Supreme Court review in that case because it was doubtful whether the decision of the court of appeals necessarily rested upon an interpretation of Section 8(d).

The refusal of the court below to enforce the Board's order in this case, on the other hand, rests

solely on its disagreement with the Board's reading of Section 8(d). Thus, although the court below analyzes at length the duration provisions of the contract in this case, it is evident that there is no essential disagreement between it and the Board on this score; both agree that the contract was in full effect when the Union struck. It is likewise undisputed that the strike was in support of the Union's proposed contract amendments, and that it was not called until after the lapse of the 60-day notice period and the date upon which the contract provided that modifications might become effective. Accordingly, the single question presented is whether, where a collective bargaining agreement is by its own provisions subject to modification at an agreed intermediate date during the course of its term, Section 8(d) must be read to prohibit strikes in support of contract modification demands until the terminal date of the contract despite the reopener clause in the agreement.

2. The restriction Congress has placed in Section 8(d) on the right to strike during the term of a contract is of manifest importance in the regulatory scheme of the Act. This Court recently granted certiorari to review the question whether the prohibitions of that section are applicable to strikes in protest against employer unfair labor practices. *Mastro Plastics Corp.* v. *National Labor Relations Board*, October Term, 1955, No. 19, certiorari granted, 348 U.S. 910. In the Board's view, the scope of the restriction as applied to strikes for contract changes, as here, presents an equally sub-

stantial question, and also warrants final determination by this Court.

Resolution of the question presented in this case is of major importance in the negotiation of hundreds of collective bargaining contracts throughout the country, and in the determination of the rights of the parties thereto. The most recent figures available from the Bureau of Labor Statistics show a markedly high incidence of contracts which, like the one in this case, provide for negotiation and modification prior to termination. Thus, of 284 contracts studied, covering more than six million employees, about 70 percent were for a duration period of longer than a year, and the vast majority of the latter group contained clauses permitting reopening on specific subject matter during the existence of the contracts. *Collective Bargaining Agreements,* BLS Report No. 75 (Dep't. of Labor, Bur. of Labor Stat., December 1954) p. 3. These findings concur with those of other surveys in revealing a decided trend among labor organizations and employers to execute contracts of longer duration than formerly, and to include provisions for reopening to negotiate changes during the contract term. See *Collective Bargaining Service,* Bureau of National Affairs, 15:75, 325; 36:301. The decision of the court below would eliminate resort to strikes in all negotiations for amendments pursuant to the reopening clauses in such contracts. That this would work a change in the relative bargaining power of the parties from that which is contemplated in the bargaining provisions of the

Act is apparent.[3] Even where contracts contain no-strike pledges, it is not unusual that such provisions are made inapplicable upon a deadlock in negotiations for changes in a contract during its term. Monthly Labor Review, Vol. 74, pp. 272, 274 (Bureau of Labor Statistics, March 1952). Accordingly, whether the decision below is correct is a matter of substantial importance in day to day industrial relations, and warrants review by this Court.

3. In the Board's view, the interpretation of Section 8(d) adopted by the court below fails to give full effect to the critical phrase "expiration date" as it is used in Section 8(d). The court below holds that the "expiration date" of a contract, before which strikes supporting contract demands are prohibited, necessarily is synonymous with the terminal date of the entire contract. This holding overlooks the fact that Section 8(d) also uses the term "expiration date" to refer to a time during the term of a contract when modifications may be put into effect.

Thus, the repeated use of the alternative "termination or modification" throughout Section 8(d)

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[3] The statement of Senator Taft made during debate on the 1947 amendments to the Act that ". . . free collective bargaining . . . means that we recognize freedom to strike when the question involved is the improvement of wages, hours, and working conditions . . .," has three times been recognized by this Court as authoritative gloss on the Act. *Amalgamated Association* v. *W.E.R.B.*, 340 U.S. 383, 395, n. 21; *U.A.W.* v. *O'Brien*, 339 U.S. 454, 457, n. 3; *National Labor Relations Board* v. *International Rice Milling Co.*, 341 U.S. 665, 673, n. 8.

supports the Board's conclusion that the requirements of that Section apply to contract changes negotiated during the term of the contract as well as to negotiations for a new contract. It also seems significant in this regard that the requirement in Section 8(d)(1) that notice be given of a proposed modification is expressly timed to run "sixty days prior to the *expiration date* [of the contract]" [emphasis added]. In this context, it would seem logically to follow that where, as here, the proposed modifications are intended to become effective during the contract's term, the phrase "expiration date" should be taken to refer not only to the termination date of the contract but also to the date during the existence of the contract when the changes may become effective, and the replaced clauses become inoperative. There is no reason to suppose that Congress intended to attribute a different meaning to that phrase as used in Section 8(d)(4) which prescribes a 60-day "waiting period" after notice of modification is given or until the "expiration date" of the contract, whichever occurs later, before a strike can be called.

Moreover, the "waiting period" prescribed by Section 8(d) was designed for the purpose, *inter alia*, of giving the parties a chance to settle a dispute over contract terms with the help of the designated conciliation services. It is reasonable to assume in these circumstances that Congress did not intend the mediation and "waiting period" procedures to apply only at termination but rather intended them to apply as well whenever the terms

of an agreement were subject to modification. In short, the Board believes that the use of the phrase "expiration date" in Section 8(d) and the underlying purpose of that Section show that it encompasses not only the terminal date of a contract but also the first date at which a contract by its own terms is subject to modification. Accordingly, the Board submits that the court below, in rejecting this conclusion, misread the Act, and thereby misapplied the prohibition against strikes in Section 8(d).

CONCLUSION

For the reasons stated, it is respectfully submitted that this petition for a writ of certiorari should be granted.

SIMON E. SOBELOFF,
Solicitor General.

THEOPHIL C. KAMMHOLZ,
General Counsel,
DAVID P. FINDLING,
Associate General Counsel,
DOMINICK L. MANOLI,
Assistant General Counsel,
DUANE BEESON,
Attorney,
National Labor Relations Board.

JULY, 1955.

APPENDIX A

UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

No. 15,158

LION OIL COMPANY, PETITIONER,

vs.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT

On Petition to Review an Order of the National Labor Relations Board.

(April 22, 1955)

* * * * *

Before SANBORN, JOHNSEN and VOGEL, Circuit Judges.

VOGEL, Circuit Judge.

This case is before the court upon the petition of Lion Oil Company to review and set aside an order of the National Labor Relations Board, and upon request of the Board for enforcement of its order issued against the Lion Oil Company on August 5, 1954, following proceedings under Section 10 of the National Labor Relations Act, as amended (61 Stat. 136, 29 U.S.C., Sec. 151, et seq.).

The petitioner, Lion Oil Company (hereinafter referred to as "Company") and Oil Workers International Union CIO (hereinafter referred to as "Union") entered into a collective bargaining contract providing in detail the wages, hours and conditions under which employees should work for the Company during the term of the agreement. Insofar as it is applicable to the problem presented herein, the agreement between the Company and the Union provided as follows:

"ARTICLE I

Term of Agreement

This agreement shall remain in full force and effect for the period beginning October 23, 1950, and ending October 23, 1951, and thereafter until canceled in the manner hereinafter in this Article provided.

This agreement may be canceled and terminated by the Company or the Union as of a date subsequent to October 23, 1951, by compliance with the following procedure:

(a) If either party to this agreement desires to amend the terms of this agreement, it shall notify the other party in writing of its desire to that effect, by registered mail. No such notice shall be given prior to August 24, 1951. Within the period of 60 days, immediately following the date of the receipt of said notice by the party to which notice is so delivered, the Company and the Union shall attempt to agree as to the desired amendments to this agreement.

(b) If an agreement with respect to amendment of this agreement has not been reached within the 60-day period mentioned in the subsection immediately preceding, either party may terminate this agreement thereafter upon not less than sixty days' written notice to the other. Any such notice of termination shall state the date upon which the termination of this agreement shall be effective."

On August 24, 1951, the Union transmitted by mail to the Company and to the Federal Mediation and Conciliation Service the following letter:

"OIL WORKERS INTERNATIONAL UNION, C.I.O.
El Dorado Local No. 434
El Dorado, Arkansas

August 24, 1951

Registered Mail
Return Receipt Requested
Special Delivery

Lion Oil Company
Lion Oil Building
El Dorado, Arkansas
Attention: Mr. T. M. Martin, President
Federal Mediation and Conciliation Service
14th and Constitution Avenue, N. W.
Washington 25, D. C.

Gentlemen:

Pursuant to the provisions of the Labor-Management Relations Act of 1947, you are hereby notified that we desire to modify the collective bar-

gaining contract now in effect between your company and this Union, in accordance with the provisions of the agreement.

We are attaching hereto some of the proposed changes which we desire to include in a new contract or as modifications to the present agreement. We shall be glad to and now offer to meet and confer with you for the purpose of negotiating a new contract or modifications to the present agreement.

Copies of this notice are being served upon the Federal Mediation and Conciliation Service, and the appropriate State Agency for the purpose of advising them of this dispute solely because of the alleged requirements of Section 8 (d) (3) of the Labor-Management Relations Act of 1947, and subject to the validity of all provisions of such Act.

Sincerely yours,

Oil Workers International
Union, C.I.O.
By /s/ E. P. Shelton,
Chairman Workmen's Committee
Lion Oil Group Local 434-
OWIU-CIO"

Representatives of the Company and the Union first met on August 29, 1951, to discuss the proposed amendments. Between that date and April 30, 1952, there were 37 meetings held for the same purpose. No agreement was arrived at.

On April 30, 1952, the employees of the Company went on strike for a wage increase and other benefits.

Neither the Company nor the Union notified the other that it intended to *terminate* the contract. On June 21, 1952, after the employees here involved had been on strike continuously from April 30, 1952, the Union offered to return all striking employees to work unconditionally. The Company refused such offer. Subsequently it distributed to all employees copies of a letter to the Union in which it defended its position that there would be no reinstatement of the strikers "until such time as the (employees) are willing to agree to go to work and continue to work for a period of at least one year with no strike or other work stoppage during that period".

Subsequent to June 21st numbers of employees, singly and in groups, appeared at the Company's plant, were interviewed by the plant superintendent and rehired upon the assurance of each individual that he would "continue to come to work daily and continuously throughout the period of the remainder of the strike" and that he would not honor any picket line at the Company's plant. It was made clear that without such assurances no striker would be permitted reinstatement. Between June 21, 1952, and August 3, 1952, 27 negotiation meetings between representatives of the Company and the Union were held in an effort to settle the dispute.

On August 3, 1952, a new agreement was formally executed with the employees being reinstated the following day.

During the period of negotiations the Union filed with the National Labor Relations Board a charge of unfair labor practices against the Company. The charge was based upon the activities of the Company subsequent to the Union's offer to return the strikers to work.

The Company filed an answer to the charge in which it denied the allegations of unfair labor practices and, further, set up as a separate defense the claim that the strike was an unlawful one because it was called by the Union at a time when there was in effect between the Union and the Company a collective bargaining contract; that the strike was in violation of the contract provisions, constituted an unfair labor practice and that the employees participating therein thereby lost their status as employees and were not entitled to relief.

By a split decision, (one member dissenting and one concurring specially) the Board held that the Company was guilty of unfair labor practices within the meaning of Sections 8(a)(1), 8(a)(3) and 8(a)(5) of the National Labor Relations Act and rejected the Company's defense that the strikers had lost the protection of the Act because they had struck while a contract was in effect. It is this decision and the resulting order that are under review here.

The primary question is this: Was the strike of April 30, 1952 in violation of the agreement be-

tween the parties and contrary to the provisions of Section 8 (d) of the Act? The relevant portions of that Section are as follows:

"* * * where there is in effect a collective-bargaining contract covering employees in an industry affecting commerce, the duty to bargain collectively shall also mean that no party to such contract shall terminate or modify such contract, unless the party desiring such termination or modification—

(1) serves a written notice upon the other party to the contract of the proposed termination or modification sixty days prior to the expiration date thereof, or in the event such contract contains no expiration date, sixty days prior to the time it is proposed to make such termination or modification;

* * * * *

(4) continues in full force and effect, without resorting to strike or lock-out, all the terms and conditions of the existing contract for a period of sixty days after such notice is given or until the expiration date of such contract, whichever occurs later:

* * * Any employee who engages in a strike within the sixty-day period specified in this subsection shall lose his status as an employee of the employer engaged in the particular labor dispute, for the purposes of sections 8, 9 and 10 of this Act, as amended * * *."

In its decision the Board held, in effect, that while the contract was in force at the time of the strike, it was not a contract of fixed duration and that the notice of August 24, 1951 with reference to modification satisfied the provisions of Section 8 (d) and that accordingly the strike was not unlawful. The majority opinion stated:

"It suffices for our decision here that the contract specifically provided for modification and that the earliest date on which modification could be made effective was October 23, 1951. The notice was given precisely 60 days before that date. As the notice was served on August 24, the end of the 60 days statutory period and the date fixed in the contract for making modifications (which, as indicated above, we consider tantamount to 'expiration' as that term is used in Section 8 (d) (4) coincided. Thus, the Union, before striking to enforce its economic demands satisfied the statutory requirements, and consequently the striking employees never lost the protection accorded economic strikers by the Act."

We cannot agree with such interpretation of the Act nor with the majority's apparent disregard of the plain provisions of the contract between the parties. The contract, in the first paragraph, provides that it shall remain in effect for a fixed period; that is, October 23, 1950 to October 23, 1951, *"and thereafter until canceled in the manner herein in this Article provided"*. (Emphasis supplied.) After October 23, 1951, the contract be-

came an indefinite one as to time but terminable at the will of either party upon complying with the specific provisions therein set forth.

The provisions with reference to *amendment* and *termination* are separately stated and are clear and unambiguous. If either party to the agreement desired to *amend* the terms thereof it would have to notify the other in writing of such desire. No such notice could be given prior to August 24, 1951. During the period of 60 days immediately following the date of the receipt of such notice, the Company and the Union were to attempt to agree as to amendments proposed. If an agreement with respect to the proposed amendments was not reached within the 60-day period following the notice, then "* * * either party may terminate this agreement *thereafter* upon not less than 60 days' written notice to the other". (Emphasis supplied.) The wording and the intent of the contract are clear. The word "thereafter" can only refer to a time *after* attempts to negotiate amendments had failed for a period of not less than 60 days. Then, and only then, could either party terminate the contract and then only by resorting to the provisions with reference to notice and a waiting period of 60 days.

We note that the Supreme Court of Arkansas, in referring to the same striking employees and the same contract here involved, said in *Lion Oil Co.* v. *Marsh*, 249 S.W.2d 569, 571:

"*Agreement in Force.* It can hardly be disputed that the agreement referred to above was in full

force when the strike and picketing occurred, as a casual reading of Article I set out above will show. Appellees (union member employees) could have easily effected a legal cancellation of the contract by giving the notice provided for therein, but the record does not show this notice was given. Since the terms of the agreement provided for an automatic continuation after October 23rd, 1951 the burden was on appellees to show they had terminated the agreement by giving the required notice; but this burden has not been met. * * *"

We thus had in existence on April 30, 1952 a collective bargaining contract, binding upon the Company and the Union, indefinite as to time but terminable by either party upon 60 days' notice. The Board would disregard the separate provisions in the contract with reference to *termination* as distinguished from *amendment*. In interpretation, contracts, whether labor or otherwise, are entitled to their plain, ordinary meaning. The intent of the parties to the contract appears obvious—a fixed status quo for a period of one year; the possibility of bilateral action to amend after the expiration of the first ten months, and, thereafter, a period of 60 days for negotiation; and the possibility of unilateral termination by either party after the expiration of the one year and upon the giving of 60 days' notice thereafter. They would not have had to so contract. The point is that they did and the contract is binding upon both and continues after the fixed period of one year for an indefinite

time unless terminated by either party thereafter in accordance with the provisions relating to *termination.*

There being in existence at the time of the strike a collective bargaining agreement between the Company and the Union, the situation is not too dissimilar to that presented in *Local No. 3, United Packinghouse Workers of America, CIO* v. *National Labor Relations Board, et al.*, 210 F.2d 325; in which this court said at pages 332 and 333:

"The strike was not called until after sixty days after the giving of the required notice. However, the expiration date of the collective bargaining contract between the company and the union expired later and hence it is argued that no strike could properly be called until after the expiration date of the contract. The Board strenuously argues that so construing the statute would to a considerable extent be destructive of its purpose. It is urged that so construed there could be no strike during the life of the contract between the employer and the union. That argument we think a very proper one to be addressed to the Congress and apparently it was urged upon Congress.

* * * * *

We are of the view that by going out on strike before the expiration date of the collective bargaining contract the employees lost their status as employees of the company and hence they were not entitled to re-employment as a matter of right."

We have here in the instant case a situation where the Union and the Company sought industrial peace through a collective bargaining agreement providing for a period of negotiation after notice of a desire to *amend* and a waiting period after notice of *termination* which could only follow failure to agree. The Board's decision would read out or ignore that part of the agreement dealing with notice of *termination* and the 60 days' waiting period to follow. That may not be done. The parties had a right to contract as they did and the plain provisions of their mutual agreement should be enforced.

At the time of the strike in question there existed a binding contract between the Union and the Company. It had not been terminated in accordance with its provisions. The strike was accordingly in violation of Section 8(d) and the strikers lost their status as employees of the Company and are not entitled to the relief provided in the Board's order.

The request of the Board for enforcement of its order is denied, and the order is set aside.

A true copy.

Attest:

E. E. KOCH,
Clerk, U. S. Court of Appeals, Eighth Circuit.

(Decree.)

UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

No. 15158

September Term, 1954

Friday, April 22, 1955.

LION OIL COMPANY, PETITIONER

vs.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT

On Petition to Review and Set Aside Order of the National Labor Relations Board

This Matter came on to be heard on the petition of the Lion Oil Company to review and set aside the Order of the National Labor Relations Board issued August 5, 1954, and on the response of said Labor Board requesting entry of a Decree denying the petition and enforcing its Order, and was argued by counsel.

On Consideration Whereof, It is now here Ordered, Adjudged and Decreed by this Court that the Petition to set aside the Order of the National Labor Relations Board in this matter be, and it is hereby, granted, and the Order is set aside. The request of said Board for enforcement of its Order is hereby denied.

APRIL 22, 1955.

APPENDIX B

The relevant provision of the National Labor Relations Act, as amended (61 Stat. 136, 29 U.S.C., 151 *et seq.*), is as follows:

Sec. 8(d). For the purposes of this section, to bargain collectively is the performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written contract incorporating any agreement reached if requested by either party, but such obligation does not compel either party to agree to a proposal or require the making of a concession: *Provided,* That where there is in effect a collective-bargaining contract covering employees in an industry affecting commerce, the duty to bargain collectively shall also mean that no party to such contract shall terminate or modify such contract, unless the party desiring such termination or modification—

"(1) serves a written notice upon the other party to the contract of the proposed termination or modification sixty days prior to the expiration date thereof, or in the event such contract contains no expiration date, sixty days prior to the time it is proposed to make such termination or modification;

"(2) offers to meet and confer with the other party for the purpose of negotiating a new

contract or a contract containing the proposed modifications;

"(3) notifies the Federal Mediation and Conciliation Service within thirty days after such notice of the existence of a dispute, and simultaneously therewith notifies any State or Territorial agency established to mediate and conciliate disputes within the State or Territory where the dispute occurred, provided no agreement has been reached by that time; and

"(4) continues in full force and effect, without resorting to strike or lock-out, all the terms and conditions of the existing contract for a period of sixty days after such notice is given or until the expiration date of such contract, whichever occurs later:

The duties imposed upon employers, employees, and labor organizations by paragraphs (2), (3), and (4) shall become inapplicable upon an intervening certification of the Board, under which the labor organization or individual, which is a party to the contract, has been superseded as or ceased to be the representative of the employees subject to the provisions of section 9(a), and the duties so imposed shall not be construed as requiring either party to discuss or agree to any modification of the terms and conditions contained in a contract for a fixed period, if such modification is to become effective before such terms and conditions can be reopened under the provisions of the contract. Any employee who engages in a strike within the sixty-

day period specified in this subsection shall lose his status as an employee of the employer engaged in the particular labor dispute, for the purposes of sections 8, 9, and 10 of this Act, as amended, but such loss of status for such employee shall terminate if and when he is reemployed by such employer.

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